

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

ROGER D. MOSBY
ADC #63018

PLAINTIFF

v.

5:19cv00160-KGB-JJV

WENDY KELLEY, Director,
Arkansas Department of Correction

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Roger D. Mosby (“Plaintiff”) is incarcerated at the Maximum Security Unit and filed this action *pro se* pursuant to 42 U.S.C. § 1983. (Doc. No. 2.) He also filed a motion to proceed *in forma pauperis*. (Doc. No. 1.) Plaintiff is a “three striker.” (Doc. No. 5.) He sued Director of the Arkansas Department of Correction Wendy Kelley alleging drugs are being placed into the meals provided at the Maximum Security Unit, making him feel like a zombie and “produc[ing] imbalances in [his] body and health.” (Doc. No. 2 at 7-8, 15-16, among others.) Because of the alleged doping, Plaintiff says he is not eating regularly. He further contends he cannot pursue his claims in court because he does not have and cannot get the names of the individuals he wants to sue. (*Id.* at 16.) Among other claims, he also maintains he does not have sufficient access to legal materials and his right to access the courts has been violated. (*Id.* at 17-20.) For the purpose of determining imminent danger, I found Plaintiff’s allegations that his meals are being tainted with drugs frivolous. No other allegations in the record indicate Plaintiff is in imminent danger of serious physical injury.

On May 9, 2019, I directed Plaintiff to file the statutory filing fee of \$400.00 within fourteen days. (Doc. No. 3.) Plaintiff was warned that his failure to do so would result in the

dismissal of this action without prejudice. (*Id.*) Plaintiff asked for an extension of time in which to respond to my May 9 Order. (Doc. No. 4.) His motion was granted, and he was given until May 31, 2019 to file his response. (Doc. No. 5.)

In Plaintiff's June 3, 2019 Response, he contends the merits of his complaint entitle him to *in forma pauperis* status, among other arguments. (Doc. No. 6). Despite Plaintiff's Response, and after another thorough review of Plaintiff's Complaint, I find his allegations he is being drugged frivolous. *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992); *Vandiver v. Prison Health Services, Inc.* 727 F.3d 580, 585 (6th Cir. 2013). I further find Plaintiff made no other allegations that indicate he is in imminent danger of serious physical injury.

IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff's Complaint (Doc. No. 2) be DISMISSED without prejudice.
2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations and the accompanying Judgment would not be taken in good faith.

DATED this 3rd day of June 2019.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE